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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,618	01/13/2004	David B. Lester	LES.03.01	4789
48008	7590	09/02/2005	EXAMINER	
VIRTUAL LEGAL, P.C. MICHAEL A. KERR 3476 EXECUTIVE POINTE WAY, UNIT 16 CARSON CITY, NV 89706			CHAMBERS, MICHAEL S	
		ART UNIT		PAPER NUMBER
		3711		

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

(11)

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/757,618	LESTER, DAVID B.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mike Chambers	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 August 2005.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16 and 21-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/13/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of claims 1-16 and 21-23 is acknowledged.

Claims 17-20 and 24 have been canceled by the applicant.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,8,12-13,15-16, 21,22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandell et al (3806132). Brandell discloses an opaque and malleable material (2) that is configured to be deformed upon impact with said ball; a deformable sheet having a front face that is attached to said opaque and malleable material, said deformable sheet having a back face; and a means (6) for affixing said training aid to a hitting instrument (fig 2).

As to claim 2 : Brandell discloses a metallic material (3:15).

As to claim 3 : Brandell discloses an adhesive layer (fig 2).

As to claim 4 : Brandell discloses a metallic layer that contacts the ball (fig 2, see lead line 8).

As to claim 8 : Brandell discloses a first and second sheet (fig 6).

As to claim 12: See claim 1 rejection. Brandell discloses a second sheet (4:59-65).

As to claim 13 : Brandell discloses a deformable sheet (fig 2). The adhesive sheet is considered a deformable sheet.

As to claim 15 : The device of Brandell would naturally have some deformation when hit due to its thickness (3:11-15).

As to claim 16 : Brandell discloses an aluminum material (3:15).

As to claims 21,22 and 23 : Brandell discloses the sport of golf (Abstract).

Also,

Claims 1 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Grossman (2660436). Grossman discloses

an opaque and malleable material (57) that is configured to be deformed upon impact with said ball; a deformable sheet (52) having a front face that is attached to said opaque and malleable material, said deformable sheet having a back face; and a means (56) for affixing said training aid to a hitting instrument (fig 6, 3:25-45).

As to claim 21 : Grossman discloses the sport of golf (Abstract).

Also,

Claims 1 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (5033746). Jones discloses

an opaque and malleable material (18) that is configured to be deformed upon impact with said ball; a deformable sheet (52) having a front face that is attached to said opaque and malleable material, said deformable sheet having a back face; and a means (56) for affixing said training aid to a hitting instrument (fig 6, 3:25-45).

As to claim 21 : Jones discloses the sport of golf (Abstract).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brandell as applied to claim 8. The thickness of the second sheet is a matter of design choice. The specification provides no unexpected results in using a thicker second sheet. It would have been obvious to one of ordinary skill in the art to have selected an appropriate thickness for the second sheet based on cost and design considerations.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brandell as applied to claim 13. The thickness of the second sheet is a matter of design choice. The specification provides no unexpected results in using a thicker second sheet. It would have been obvious to one of ordinary skill in the art to have selected an appropriate thickness for the second sheet based on cost and design considerations.

Also,

Claims 2-16, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones as applied above and further in view of Brandell. Brandell discloses the use of a metallic layer ( 3:15). Jones discloses the layers can be made of various materials (2:41-44) It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the aluminum sheet of sssss of sssss with

the apparatus of Jones in order to provide a training device that does not distract the golfer and is more durable.

As to claim 3 : Brandell discloses an adhesive layer (fig 2).

As to claim 4 : Jones discloses an outer layer (fig 1, item 10).

As to claim 5 : The thickness of the second sheet is a matter of design choice. The specification provides no unexpected results in using a thicker second sheet. It would have been obvious to one of ordinary skill in the art to have selected an appropriate thickness for the second sheet based on cost and design considerations.

As to claim 6 : The device of Jones or Brandell would provide an impression (Abstract).

As to claim 7 : Brandell discloses a tab (fig 1, item 8).

As to claim 8 : Brandell discloses a first and second sheet (fig 6).

As to claims 9 and 14 : The thickness of the second sheet is a matter of design choice. The specification provides no unexpected results in using a thicker second sheet. It would have been obvious to one of ordinary skill in the art to have selected an appropriate thickness for the second sheet based on cost and design considerations.

As to claim 10 : The device of Jones or Brandell would provide an impression (Abstract).

As to claim 11 : Brandell discloses an aluminum material (3:15).

As to claim 12: See claim 1 rejection. Brandell discloses a second sheet (4:59-65).

As to claim 13 : Brandell discloses a deformable sheet (fig 2). Tha adhesive sheet is considered a deformable sheet.

As to claim 15 : The device of Brandell would naturally have some deformation when hit do to its thickness (3:11-15).

As to claim 16 : Brandell discloses an aluminum material (3:15).

As to claims 22 and 23 : Brandell discloses the sport of golf (Abstract).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Chambers  
Examiner  
Art Unit 3711

August 30, 2005

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700